

(f) *Electronic distribution.* Where a prospectus is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information.

[63 FR 6385, Feb. 6, 1998]

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisement or other sales material that is not a prospectus, or an advertisement or sales material excluded from the definition of prospectus by section 2(10) of the Act (15 U.S.C. 77b(10)) and related § 230.134, will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), if:

(1) It is with respect to an investment company registered under the Investment Company Act of 1940 (*1940 Act*), or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act,

(2) It contains only information the substance of which is included in the section 10(a) prospectus,

(3) It includes a conspicuous statement that:

(i) Identifies a source from which an investor may obtain a prospectus containing more complete information about the investment company, which should be read carefully before investing; or

(ii) If used with a profile under § 230.498 ("Profile"), indicates that information is available in the Profile about the investment company, the procedures for investing in the investment company, and the availability of the investment company's prospectus.

NOTE TO PARAGRAPH (A)(3): The fact that the statements included in the advertisement are included in the section 10(a) prospectus does not relieve the issuer, underwriter, or dealer of the obligation to ensure

that the advertisement is not false or misleading.

(4) It contains the statement required by Rule 481(b)(2) under the Securities Act (§ 230.481(b)(2) of this chapter) when used prior to effectiveness of the company's registration statement or, in the case of a registration statement that becomes effective omitting certain information from the prospectus contained in the registration statement in reliance upon Rule 430A under the Securities Act (§ 230.430A of this chapter), when used prior to the determination of the public offering price,

(5) It does not contain and is not accompanied by any application by which a prospective investor may invest in the investment company, except that:

(i) A prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by which a unit investment trust offers periodic payment plan certificates may contain a contract application although the prospectus includes another prospectus that, pursuant to this section, omits certain information required by section 10(a) of the Act, regarding investment companies in which the unit investment trusts invests; and

(ii) It may be used with a Profile that includes, or is accompanied by, an application to purchase shares of the investment company as permitted under § 230.498.

(6) In the case of an advertisement containing performance data of an open-end management investment company or a separate account registered under the 1940 Act as a unit investment trust offering variable annuity contracts (*trust account*), it includes a legend disclosing that the performance data quoted represents past performance and that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; *Provided, however*, That an advertisement may omit legend disclosure pertaining to the fluctuation of the principal value of an investment in a money market fund. In addition, if a sales load or any other nonrecurring fee is charged, the advertisement must disclose the maximum amount of the load or fee; if the sales load or fee is

not reflected, the advertisement must also disclose that the performance data does not reflect its deduction, and that, if reflected, the load or fees would reduce the performance quoted;

NOTE TO PARAGRAPH (A)(6): All advertisements made pursuant to this rule are subject to Rule 420 [17 CFR 230.420].

(7)(i) In the case of an investment company that holds itself out to be a money market fund, it includes the following statement:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at \$1.00 per share, it is possible to lose money by investing in the Fund.

(ii) A money market fund that does not hold itself out as maintaining a stable net asset value may omit the second sentence of the statement in (a)(7)(i) of this section.

(b) An advertisement made pursuant to paragraph (a) of this section need not contain the statement required by Rule 481(b)(1) (§ 230.481(b)(1)).

(c) An advertisement made pursuant to paragraph (a) of this section need not be filed as part of the registration statement filed under the Act.

NOTE: These advertisements, unless filed with the NASD, are required to be filed in accordance with the requirements of Rule 497 (17 CFR 230.497).

(d) In the case of a money market fund:

(1) Any quotation of the money market fund's yield in an advertisement shall be based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter), Form N-3 (§§ 239.17a and 274.11b of this chapter), or Form N-4 (§§ 239.17b and 274.11c of this chapter) and may include:

(i) A quotation of current yield that identifies the length of and the date of the last day in the base period used in computing that quotation; or

(ii) A quotation of effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to an identical base period and is presented with equal prominence; or

(iii) A quotation or quotations of tax equivalent yield or tax equivalent ef-

fective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to the same base period as the quotation of current yield, is presented with equal prominence, and states the income tax rate used in the calculation.

(2) Accompany any quotation of the money market fund's total return in an advertisement with a quotation of the money market fund's current yield under paragraph (d)(1)(i) of this section. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(e) In the case of an open-end management investment company or a trust account (other than a money market fund referred to in paragraph (d) of this section), any quotation of the company's performance contained in an advertisement shall be limited to quotations of:

(1) A current yield that—

(i) Is based on the methods of computation prescribed in Form N-1A, N-3, or N-4;

(ii) Is accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of total return; and

(iv) Identifies the length of and the date of the last day in the base period used in computing the quotation.

(2) A tax equivalent yield that—

(i) Is based on the methods of computation prescribed in Form N-1A, N-3, or N-4;

(ii) Is accompanied by quotations of yield as provided for in paragraph (e)(1) of this section and total return as provided for in paragraph (e)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of yield and total return;

(iv) Relates to the same base period as the required quotation of yield; and

(v) Identifies the length of and the date of the last day in the base period used in computing the quotation.

(3) Average annual total return for one, five, and ten year periods; *Provided*, That if the company's registration statement under the Securities Act of 1933 (15 U.S.C. 77A *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed; and *Provided further*, That such quotations—

(i) Are based on the methods of computation prescribed in Form N-1A, N-3, or N-4;

(ii) Are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Are set out with equal prominence; and

(iv) Identify the length of and the last day of the one, five, and ten year periods; and

(4) Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement—

(i) Reflects all elements of return;

(ii) Is accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of total return; and

(iv) Identifies the length of and the last day of the period for which performance is measured.

(f) All performance data contained in any advertisement must be as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed; *Provided, however*, That any advertisement containing total return quotations shall be considered to have complied with this provision if the total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication.

[47 FR 11446, Mar. 16, 1982, as amended at 48 FR 55725, Dec. 15, 1983; 52 FR 21262, June 5, 1987; 53 FR 3879, Feb. 10, 1988; 53 FR 9768, Mar. 25, 1988; 56 FR 8124, Feb. 27, 1991; 61 FR 24655, May 15, 1996; 62 FR 64978, Dec. 9, 1997; 63 FR 13984, Mar. 23, 1998]

EFFECTIVE DATE NOTE: At 66 FR 9017, Feb. 5, 2001 §230.482 was amended by removing “; and” at the end of paragraph (e)(3)(iv) and in its place adding a period; by redesignating paragraphs (e)(4) and (f) as paragraphs (e)(5) and by adding new paragraphs (e)(4) and (f); and revising newly redesignated paragraph (e)(5), effective Apr. 16, 2001. For the convenience of the user the added and revised text is set forth as follows:

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* * * * *

(e) * * *

(4) For an open-end management investment company, average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) for one, five, and ten year periods; *Provided*, That if the company's registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed; and *Provided further*, That such quotations:

(i) Are based on the methods of computation prescribed in Form N-1A;

(ii) Are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Are accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iv) Include both average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption);

(v) Are set out with equal prominence and are set out in no greater prominence than the required quotations of total return; and

(vi) Identify the length of and the last day of the one, five, and ten year periods; and

(5) Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:

(i) Reflects all elements of return;

(ii) Is accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (e)(4) of this section;

(iv) Is set out in no greater prominence than the required quotations of total return; and

(v) Identifies the length of and the last day of the period for which performance is measured.

§ 230.483

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(f) An advertisement for an open-end management investment company (other than a company that is permitted under § 270.35d-1(a)(4) of this chapter to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) that represents or implies that the company is managed to limit or control the effect of taxes on company performance shall accompany any quotation of the company's performance permitted by paragraph (e) of this section with quotations of total return as provided for in paragraph (e)(4) of this section.

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§ 230.483 Exhibits for certain registration statements.

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, the following provisions apply:

(a) Such registration statement shall contain an exhibit index, which should immediately precede the exhibits filed with such registration statement. The exhibit index shall indicate by handwritten, typed, printed or other legible form of notation in the manually signed original registration statement the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located.

(b) If any name is signed to the registration statement pursuant to a power of attorney, copies of such powers of attorney shall be filed as an exhibit to the registration statement. In addition, if the name of any officer signing on behalf of the registrant, or attesting the registrant's seal, is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed as an exhibit to the registration statement. A power of attorney that is filed with the Commission shall relate to a

specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) (§ 230.462(b)) under the Act.

(c)(1) All written consents are required to be filed as an exhibit to the registration statement, together with a list thereof. Such consents shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion, a reference shall be made in the list to the report or opinion containing the consent.

(2) In a registration statement filed pursuant to Rule 462(b) (§ 230.462(b)) by a closed-end company, any required consent may be incorporated by reference into the registration statement from a previously filed registration statement related to the offering, provided that the consent contained in the previously filed registration statement expressly provides for such incorporation. Any consent filed in a Rule 462(b) (§ 230.462(b)) registration statement may contain duplicated or facsimile versions of required signatures, and such signatures shall be considered manually filed for the purposes of the Act and the rules thereunder.

(d) The registrant:

(1) May file such exhibits as it may desire in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer;

(2) In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Commission may at any time in its discretion require filing of copies of any documents so omitted; and

(3) If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has